IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1936 of 1997

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RACHNA SEEDS INDUSTRY

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MR KL PANDYA, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. The petitioner is dealing in wholesale business of edible oil under the licence bearing Registration No.475/85 issued by the competent authority.

2. It is the case of the petitioner that in the regular course of business the petitioner had sold stock

of 8000 Kgs groundnut to one Vaisali Impex of Bombay which was being transported in the Truck bearing registration No.MMK 1385. The stock in question was sold for export to Moricious. The said truck was intercepted by the officers of the respondent no.2 on 19.4.1995. Thereafter the petitioner was served with a show-cause notice dated 5.7.1995 to which the petitioner submitted reply dated 1.8.1995. The Collector, vide his order dated 18.10.1995 ordered confiscation of 100% stock of 8000 Kgs of groundnut and released the truck in question.

3. Against the Order of the Collector dated 18.10.1995 the petitioner preferred Appeal No.695/1995 before the State Government, which came to be partly allowed by order dated 16.10.1996, copy of which is at Annexure-A. The petitioner has filed the present petition against the order in so far as it dismissed the appeal of the petitioner.

4. Mr. D.M. Thakkar for the petitioner has contended that the authority has accepted the explanation of the petitioner and has come to the conclusion that the alleged breach committed by the petitioner is of a technical nature and is not of a serious one. He submitted that therefore there was no case for confiscation of any commodity or there was no case for imposing any penalty upon the petitioner. Mr. Thakkar has strongly relied upon a judgement of the apex Court in the case of N. Nagrendra Rao & Co. Vs. State of Andhra Pradesh, reported in 1995(1) GLH 298. In the said decision it is observed that the language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word "may". A trader indulging in black marketing or selling adultered goods, etc. should not, in absence of any violation, be treated on a par with technical violations such as failure to put up the price list, etc., or even discrepancies in stock.

5. Mr. Thakkar contended that in view of the above observation, the petitioner is not involved in black marketing or selling adulterated goods. Even the explanation is accepted by the authority and therefore there is no case for confiscation as ordered by the authority. I find substance in the submission of Mr. Thakkar. In view of the above decision of the Supreme Court and the finding of the authority, no case is made out for confiscation of the seized goods. The impugned order, therefore, requires to be quashed and set aside.

6. In the result, the petition succeeds. The

impugned order dated 16.10.1995 passed by the Joint Secretary, Food & Civil Supplies Department, ordering confiscation of 10% stock of groundnut, is hereby quashed and set aside. Rule is made absolute with no order as to costs.

[K.S. JHAVERI, J.]

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